

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

James Robinson (Respondent) applied for industrial disability retirement (IDR) on July 8, 2021, based on pulmonary (pneumonia, paraseptal emphysema) conditions. By virtue of employment as a Correctional Officer for Salinas State Prison, California Department of Corrections and Rehabilitation (Respondent CDCR), Respondent was a state safety member of CalPERS.

As part of CalPERS' review of Respondent's medical condition, Sharad K. Dass, M.D., a board-certified Pulmonologist, performed an Independent Medical Examination (IME). Dr. Dass interviewed Respondent, reviewed his work history and job descriptions, obtained a history of his past and present complaints, and reviewed his medical records. Dr. Dass opined that his physical examination of the Respondent did not indicate that he was experiencing any diminished lung function. He noticed minor emphysema in Respondent's CT scan that likely did not impact his ability to engage in physical exertion. Dr. Dass concluded that Respondent did not experience significant enough limitations in his lung functions to substantially incapacitate him from his usual duties as a Correctional Officer, and that any residual limitations from his COVID-19 infection were not permanent and would likely resolve.

To be eligible for disability retirement, competent medical evidence must demonstrate that an individual is substantially incapacitated from performing the usual and customary duties of his or her position. The injury or condition which is the basis of the claimed disability must be permanent or of an extended duration which is expected to last at least 12 consecutive months or will result in death.

After reviewing all medical documentation and the IME reports, CalPERS determined that Respondent was not substantially incapacitated from performing the duties of his position as a Correctional Officer. On January 10, 2022, CalPERS notified Respondent of its determination.

Respondent appealed this determination and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on January 18, 2023. Respondent represented himself at the hearing. Respondent CDCR did not appear at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet, answered Respondent's questions and clarified how to obtain further information on the process.

At the hearing, Dr. Dass testified in a manner consistent with his examination of Respondent and the IME report. Dr. Dass' medical opinion is that Respondent's medical records reflected minor emphysema which did not affect his physical abilities. Any residual inflammation Respondent continued to experience from his COVID-19 illness was temporary and would resolve. Therefore, Dr. Dass' opined that Respondent is not substantially incapacitated.

Respondent testified on his own behalf that Dr. Dass overestimated his physical fitness and probability of making a full recovery. Respondent testified that he suffers from ongoing anxiety and panic attacks, he sleeps poorly, and has unsteady hands. Respondent also called his wife to testify on his behalf, who corroborated his testimony. Respondent did not call any physicians or other medical professionals to testify, and did not submit medical records from his treating physicians to support his appeal.

To be approved for disability retirement, Respondent must show he was “incapacitated for the performance of duty” at the time he retired by presenting competent medical opinion demonstrating his inability to work and that this inability is of permanent and extended duration. After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent’s appeal. The ALJ found that Respondent had offered no competent medical evidence to support his allegations that he is impaired from performing his duties as a correctional officer. The ALJ found Dr. Dass’ unrebutted opinion to be credible and persuasive. The ALJ concluded that Respondent is not eligible for industrial disability retirement.

For all the above reasons, staff argues that the Proposed Decision should be adopted by the Board.

March 15, 2023

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